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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 SHELBY KCS BUSH,

11 CASE NO. 20-5056 RJB-TLF

12 Petitioner,

13 v.
14 ORDER ADOPTING REPORT AND
15 RECOMMENDATION

16 STATE OF WASHINGTON,

17 Respondent.

18 This matter comes before the Court on the Report and Recommendation of U.S.

19 Magistrate Judge Theresa L. Fricke (Dkt. 11) and Petitioner's pleading entitled "Reply to Order
20 Denying Motion for Copies of Submissions without prejudice" (Dkt. 13) which the Court should
21 construe as an appeal of a magistrate judge's opinion under Fed. R. Civ. P. 72. The Court has
22 considered the Report and Recommendation, the Petitioner's objections, the appeal, and the
23 remaining file.

24 **Report and Recommendation.** The Report and Recommendation recommends
25 dismissal, without prejudice, of this habeas corpus petition for failure to exhaust state court
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remedies and denial of various motions. Dkt. 11. The Report and Recommendation also recommends denial of a certificate of appealability. *Id.*

The Report and Recommendation (Dkt. 11) should be adopted. The Plaintiff's objections do not provide grounds to decline to adopt the Report and Recommendation. Dkt. 12. He repeats his prior arguments that he has "vicariously exhausted" his claims and asserts that there is no time bar to raising a constitutional claim. *Id.* These objections are meritless and are addressed in the Report and Recommendation.

Standard on Appeal of Magistrate Judge's Order. Fed. R. Civ. P. 72 provides in relevant part as follows:

(a) Nondispositive Matters. When a pretrial matter not dispositive of a party's claim or defense is referred to a magistrate judge to hear and decide, the magistrate judge must promptly conduct the required proceedings and, when appropriate, issue a written order stating the decision. A party may serve and file objections to the order within 14 days after being served with a copy. A party may not assign as error a defect in the order not timely objected to. The district judge in the case must consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law.

Appeal of Order Denying Motion for Copies. The Magistrate Judge’s Order denying the Petitioner’s motion for copies (Dkt. 10) should be affirmed. The Magistrate Judge properly found that the Petitioner failed to point to sufficient grounds to have the motion granted. Further, the case was filed electronically. Accordingly, Petitioner is given copies of all the court orders and has his own pleadings. The order (Dkt. 10) should be affirmed.

Further Pleadings. The Petitioner is notified that other than a notice of appeal, further pleadings will be filed in the case, but no action will be taken on them.

ORDER

Therefore, it is hereby **ORDERED** that:

- The Report and Recommendation (Dkt. 11) **IS ADOPTED**;

- 1 • This case **IS DISMISSED WITHOUT PREJUDICE**;
- 2 • The certificate of appealability **IS DENIED**;
- 3 • Petitioner's appeal of the Magistrate Judge's Order (Dkt. 13) **IS DENIED**;
- 4 • The Magistrate Judge's Order denying the Petitioner's motion for copies (Dkt. 10)
5 **IS AFFIRMED**; and
- 6 • Other than a notice of appeal, further pleadings from the Petitioner will be filed,
7 but, **NO FURTHER ACTION** will be taken on them.

8 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
9 to any party appearing *pro se* at said party's last known address.

10 Dated this 26th day of May, 2020.

11 
12 ROBERT J. BRYAN

13 United States District Judge